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Comments of Craig Cunningham

Like most consumers, I receive upwards of 10 calls per day from various telemarketers selling and promoting almost every service and product imaginable. I consider these calls unsolicited, unwanted and anonymous forms of harassment and distraction that take people's attention and valuable time to determine if they are calls that are wanted or needed.

Current regulations and enforcement are insufficient to stop bad actors

As a non-lawyer citizen who files TCPA lawsuits in Federal Court to thwart these unlawful calls, I can say with certainty it is more important than ever for the FCC to interpret the TCPA definitions and law in a manner that is consistent with the intent of Senator Hollings and the other Congressmen who drafted it. Since its inception, the priority of the statute is clear: protection the privacy rights of consumers from unwanted calls while providing a uniform set of regulations for those who engage in telemarketing.

A simple look at the landscape of bad actors and repeated bad actors that operate profitably with impunity is a simple indication that the problem is bad and getting worse and that is with the current rules on the books. Any weakening of the laws will simply thwart any efforts to stem the tide of abusive telemarketing calls and hold the telemarketers and sellers accountable. We know who the bad actors are, such as Adrian Abramovich, who was sued by the FCC for massive illegal telemarketing. Jay Gotra of Alliance Security who has been sued twice by the FTC for illegal telemarketing calls with no end in sight. Michael Montes who was sued by the Attor-

ney General of Missiouri and Public Utilities Commission of Mississippi for illegal telemarketing. Montes continues to this day to making illegal telemarketing calls.

As a litigant and consumer advocate and in my litigation history, I have many cases where I have sued defendants once, resolved the case, and recived multiple additional telephone calls later from the very same defendant! See Cunningham v Rapid Capital in the Middle District of Tennessee, Cunningham v CBC Conglomerate in the Middle District of Tennessee and Eastern District of Texas, Cunningham v Seven 90 in the Middle District of Tennessee and Eastern District of Texas, and Cunningham v Trilegiant in the Middle District of Tennessee. In Cunningham v Shore Funding Solutions, a filed Class action, I continue to receive calls from Shore Funding Solutions multiple times more than a year after the lawsuit was filed and served on the defendants. Clearly these defendants have no fear of the TCPA penalties or damages, at all! There is no reason to weaken the TCPA or reduce the damages or cap the damages. None of the defendants care, so why should the FCC bother giving them any slack?

This is precisely why the telemarketing industry is fighting so hard to preserve the right to make billions of automated cold calls across the country to millions of people with little regard for most people they are calling. The realized costs are not significant enough to deter the bad behavior.

Automatic Telephone Dialing System (ATDS)

The TCPA defines an "automatic telephone dialing system" as "equipment which has the capacity – (A) to store or produce telephone numbers to be called, using a random or sequential number generator, and (B) to dial such numbers. The D.C. Circuit court determined the FCC's in-

terpretation of the word “capacity” for calling systems was overly broad and included the capacity of smart phones if taken literally. However, to ignore the meaning of “capacity” as it was intended in the context of prohibiting automated calls generated would be catastrophic for consumers. A common sense approach to defining equipment with “capacity” would exclude equipment such as smart phones ordinarily used for person-to-person calls, not calls made in mass quantity or setting a maximum number of dials per second to be considered an ATDS, for example, for example any system or phone that could possibly dial faster than placing 1 call per 5 seconds is considered an ATDS. The more narrow the exclusion the better, so as to give courts the proper authority to determine on a case-by-case basis if necessary whether or not equipment being used to transmit calls falls under the overall intent of the definitions and prohibitions under the statute. Otherwise, the floodgates will open with “TCPA compliant” custom designed dialing systems to generate billions of calls from all over the world to US consumers.

Called Party vs. Intended Recipient

I have receieved autodialed, pre-recorded debt collection calls for wrong parties repeatedly to my wireless telephone number. I have had my number for at least 4 years in a row, and yet I still get wrong person calls all the time. Reassigned numbers are red herring just to give an presumed defense so they can claim “oops we were calling for the previous subscriber” when in reality they can just blanket the country without regards to who they are actually reaching. Without the clear, accurate, common sense distinction of “called party” from “intended recipient”, I would be subjected to these harassing and annoying calls without recourse or remedy. As a non-lawyer, I would respectfully submit it is critical for the FCC to continue to try to interpret the plain lan-

guage of the statute to reflect its original intent. We need these interpretations to represent ourselves against well-funded, predatory telemarketing companies that simply don't want to spend the money to filter reassigned numbers from their system. To allow "called party" to include the person the caller intended to reach would turn the TCPA on its head.

Conclusion

Thank you to the Commission for requesting and considering these comments. I am available to answer any questions you have regarding these comments.